

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



v

RICHARDSON TRUCKING INC.

DECISION OF THE HEARING OFFICER

Appearances: Kevin C. Devine Esq., Attorney for the Employer

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:44 IV liquidated damages
RSA 275:33 equal pay
RSA 275:39 liquidated damages

Employer: Richardson Trucking Inc.
PO Box 1773
Hampton NH 03842

Date of Hearing: September 29, 2014

Case No: 48561

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on July 28, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on September 9, 2014. The Wage Claim is for \$34,965.00 in unpaid wages. The claimant said that she worked for the employer for fourteen years and she worked under a verbal hiring agreement. Part of the Wage Claim is under the Equal Pay for Equal Work Law. The claimant is seeking liquidated damages on both the Wage Claim and the Equal Pay Law.

The claimant testified that during her most recent employment she was making about one half of her previous salary. She also stated that she had a reduction in benefits compared to others. She believes that the employer targeted her position because she was a female and that the male employees did not suffer such reductions in their wages.

The claimant feels that the employer singled her out and is in violation of the Equal Pay Law. The claimant is seeking liquidated damages for the wages that she lost when her pay, and only her pay, was reduced.

The claimant testified that about a year ago the employer told her that her position was being eliminated because of the financial position of the company. The claimant said that she offered to work with the employer so that they could reach a compromise that would allow her to work and the employer to continue business with her position funded. The claimant did file a Wage Claim at this time but did not go forward with the process.

The claimant said that she went back to work with the understanding her salary would remain the same. The employer stated that he could only afford a per diem amount for two days in the first week of the pay period and three days in the second week of the pay period. This reduced her wages in half. She feels that none of the other employees were asked to do this and so she was singled out for this action.

The claimant further stated that when she was hired there was a verbal agreement for medical and dental benefits. She said that when the owner reached the age of 66 and he had the federal insurance benefits, he cut her medical insurance. She had to pay for it for the period of time before she too reached the age for the federal benefits. The claimant feels that this loss of coverage and the fact she had to pay for it constitutes a loss of wages.

The claimant also stated that she lost her dental plan but through negotiations with the employer she was allowed to keep her coverage but she had to pay the employer directly and the money did not go to the company. She did however, have the coverage.

The employer testified that the claimant's position was eliminated in 2013. The company lost a large account that gave them 90% of their business. The claimant was rehired in a part-time position on a per diem basis. Instead of the working the entire established pay period, the claimant would work two days and then three days. This was done to fund the position but was in effect a reduction of about one half of the claimant's yearly salary.

In 2014 the claimant was again let go because the company could not afford the position any longer. The company had a practice of paying on the 1st and the 15th of the month. The claimant was in charge of payroll and she was paying herself on a bi-weekly schedule and not the bi-monthly schedule. The employer testified that the claimant was actually paying herself for days she felt she was owed and not in accordance with the re-hiring understanding.

The employer maintains that there was no issue for equal pay for equal work because the claimant was the only one doing her job and she is trying to compare her position with the truck driver's positions and the position of the owner. There is no basis for this claim.

The employer also testified that there was no guarantee of health insurance. The employer had the right to stop a benefit at any time and did so. The claimant knew about the changes and picked up the coverage on her own. The employer did maintain the dental coverage and there was no indication that any claim had not been paid. It did not matter where the claimant was paying the money, the coverage was in place.

The employer said that there is no basis for liquidated damages on the Wage Claim because the claimant was paid for all hours worked. An employer has the right to make changes and they were not done on a “whim” but rather based on the financial structure of the company.

FINDINGS OF FACT

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:44 IV If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10 percent of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.

This part of the law allows for a claimant to seek a finding for liquidated damages when the Hearing Officer finds that the employer was willful and did not have good cause for their action(s).

RSA 275:37 No employer or person seeking employees shall discriminate between employees on the basis of sex by paying employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions, except where such payment is made pursuant to.

This part of the law states that there must be equal pay for the same work being done by each sex. The criteria, for determining the standards, are clearly spelled out in the law.

RSA 275:39 An employer who violates the provisions of RSA 275:37 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in an additional equal amount of liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. At the request of any employee paid less than the wage to which she is entitled under this subdivision, the labor commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the liquidated damages above provided for. The commissioner shall not be required to pay the entry fee, or other costs, in connection with such

action. The commissioner shall have power to join various claimants against the employer in one cause of action.

This section of the law allows for a finding for liquidated damages when the claimant prevails in the claim.

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and that she was discriminated against because of her gender. The claimant did not bear this burden.

In the issue of equal pay, the claimant compared herself to other employees doing different jobs. The fact that the other employees did not have a salary reduction does not mean that she should not have had a wage change. It is within the rights of an employer to set wages. In this case the claimant knew about the wage structure because she prepared the payroll figures.

The request for liquidated damages for the equal pay for equal work is invalid because there is no finding that there was gender discrimination for wages.

The claim about the wages being cut in half is also invalid. The claimant was brought back to work with the understanding that she was to be paid a per diem rate that was equal to one half of what she used to earn with the employer. The claimant stated that she was not notified, in writing, about this change. This is not an accurate statement because the claimant was aware of the change because she prepared the company payroll figures.

It was also testified to by the employer that the claimant did not pay herself the proper and agreed upon wage scale. The claimant was overpaying herself on months when there was more than two, two week pay periods. At the time this was happening, the employer was paying on the 1st and the 15th of a month and not on a two week cycle.

The claimant also wanted to reinstitute a Wage Claim that was filed in 2013. This claim was withdrawn when the claimant went back to work. The claim was not followed at the time of the filing.

There is no finding for liquidated damages because there is no finding that the employer was willful and did not have good cause for their action.

The Wage Claim is invalid.

DECISION

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that she was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

Thomas F. Hardiman
Hearing Officer

Date of Decision: October 21, 2014

TFH/slh